



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

FEB 12 1999

OFFICE OF
ENFORCEMENT AND
COMPLIANCE ASSURANCE

MEMORANDUM

SUBJECT: Handling Self-disclosures of 40 C.F.R. 280.21 Violations in the Underground Storage Tank Program

FROM: Eric V. Schaeffer, Director
Office of Regulatory Enforcement

for Anna H. Virbick, Director
Office of Underground Storage Tanks

TO: UST Regional Program Managers, Regions I-X
UST Regional Enforcement Managers, Regions I-X
Regional Counsel, Regions I-X

Attached is the final version of a summary for handling self-disclosures regarding violations of 40 C.F.R. § 280.21 in the underground storage tank (UST) program. The document sets forth a four-part strategy for handling self-disclosures received from low enforcement priority facilities and high enforcement priority facilities as defined in the December 9, 1998 memorandum entitled, "EPA's Inspection and Compliance Assistance Priorities for Underground Storage Tank Systems Not Meeting the 1998 Deadline." These procedures are to be used to handle any self-disclosures of the December 22, 1998 deadline requirements. The Regions are to follow these procedures until June 22, 1999. As of June 22, 1999, low enforcement priority facilities will be considered high enforcement priority facilities. Therefore, all self-disclosures are to be handled under EPA's Audit Policy.¹

The summary document explains that EPA will share self-disclosures with States and if the State chooses to take the lead in developing an appropriate response to the self-disclosure, the Region will defer to the State. The following States, however, have Immunity Laws that could preclude development of an appropriate response to the self-disclosure: Colorado, Kentucky, Kansas, South Carolina, New Hampshire, Montana, Alaska, Nevada,

¹ Incentives for Self-Policing: Discovery, Disclosure, Correction and Prevention of Violations, 60 Fed. Reg. 66706 (Dec. 22, 1995) ("Audit Policy").

Nebraska, Iowa, South Dakota and Rhode Island. The Region should call Christine McCulloch ((202) 564-4008) or Joan Olmstead ((202) 564-4018) to discuss how to handle any self-disclosures the Region receives from facilities in these States prior to sharing the self-disclosure with the State.

The following procedures should be used to track the self-disclosures received and handled by EPA. For those self-disclosures that qualify for relief under the Audit Policy, the Region should enter the case information into the Docket Database, and fax the completed settlement and initial self-disclosure to Leslie Jones of ORE at (202) 564-0011. The settlements and initial self-disclosures will be publically available in the EPA reading room. The Region should also, upon resolution of the self-disclosure, fill out and submit to the appropriate Regional contact a "Case Conclusion Data Sheet". We have enclosed, for your information, a copy of the May 23, 1997 memorandum entitled "Implementing EPA's Audit Policy" which provides more information on processing self-disclosures under the Audit Policy.

At this time, for self-disclosures that are not handled under the Audit Policy, please send an e-mail message to Joan Olmstead with the following information: name of entity, location, violations, date of self-disclosure and case outcome (e.g., referred to State, EPA settled case with settlement amount and compliance schedule or case closed without settlement). The RCRA Enforcement Division is hopeful, that in the near future, a data base will be available to receive this information.

If you have any further questions about this matter, please call David Nielsen. He can be reached at (202) 564-4022.

Attachments

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Regional Enforcement Coordinators, Regions I-X

Date: February 12, 1999

Summary: Self-Disclosure Settlement Policy for UST Dec. 22, 1998 Deadline Violations

This document provides procedures for the handling of self-disclosures received by the U.S. Environmental Protection Agency (EPA) for violations of the December 22, 1998 UST requirements. The procedures are to provide consistency within the Agency for the processing of the UST self-disclosures. Regions should follow these procedures until June 22, 1999; after that date, all self-disclosures are to be handled under EPA's Audit Policy.¹ Although Regions handling self-disclosures are to use the procedures below, the Regions retain the discretion to prioritize use of their enforcement resources, including those used to process the UST self-disclosures.

PROCEDURES

A. Role of the States

Each Regional office will work with their States that have comparable upgrade, replacement and closure requirements to coordinate efforts regarding self-disclosures. If the State chooses to take the lead in developing an appropriate response to the self-disclosure, the Region will defer to the State. If the State does not want to handle the self-disclosure, the Region will handle the self-disclosure in accordance with the procedures set forth below.

B. EPA Review and Settlement of UST Self-Disclosures

Low Enforcement Priority Facilities: (a single facility owned or operated by one person with generally four or fewer tanks, local or State government facilities)

Facility Self-disclosure before February 12, 1999:

- Within 15 days of self-disclosure, the owner or operator must show: (1) a valid contract for the facility to come into compliance with the December 22, 1998 requirements; (2) current compliance with leak detection; and (3) current compliance with financial assurance requirements.
- The owner or operator must come into compliance: (1) before March 22, 1999 by upgrading, replacing or closing the UST system and pay a settlement amount of \$150 per tank; or (2) after March 22, 1999, but before June 22, 1999, by upgrading, replacing or closing the USTS and pay a settlement amount of \$450 per tank. (Regions may grant extensions to the scheduled compliance date until June 22, 1999.)

Note: The suggested settlement amounts in this document are designed, at a minimum, to recover economic benefit during the period of non-compliance. Regional personnel may choose to calculate economic benefit for a specific facility if they feel the suggested settlement amounts in

¹ Incentives for Self-Policing: Discovery, Disclosure, Correction and Prevention of Violations, 60 Fed. Reg. 66706 (December 22, 1995) ("Audit Policy").

this document are insufficient to recoup economic benefit. Regions also have the option, when the owner or operator demonstrates an inability to pay, or other unique factors exist, to justify further adjustment or waiver of the penalty in accordance with the UST Penalty Policy.

Facility Self-Disclosure after February 12, 1999:

- Within 15 days of self-disclosure, the owner or operator must show: (1) a valid contract for the facility to come into compliance with the December 22, 1998 requirements; (2) current compliance with leak detection; and (3) current compliance with financial assurance requirements.
- The owner or operator will have **30 days, or a shorter period of time**, to come into compliance by upgrading, replacing or closing the UST system.
- The owner or operator must pay a penalty of: (1) \$675 per tank for compliance² if they come into compliance before June 22, 1999; or (2) pay the standard penalty for the entire period of non-compliance as calculated under the UST Penalty Policy if compliance occurs after June 22, 1999.

Facility Fails to Self-Disclose Violation but Comes Into Compliance Prior to EPA Inspection:

- The Region retains the discretion to file an enforcement action seeking only penalties using UST penalty policies for the period of non-compliance.

High Enforcement Priority Facilities: (federal facilities, owners or operators of multiple facilities, or large facilities with more than four tanks, or facilities that are endangering sensitive ecosystems or sources of drinking water by failing to upgrade, replace, or close USTs)

- The owner or operator will have **30 days, or a shorter time period**, to come into compliance by upgrading, replacing or closing the UST system.
- The owner's or operator's penalty amount will be based on the UST Penalty Policy and, if appropriate, the EPA Audit Policy.
- Self-disclosures from owners or operators of high enforcement priority facilities must meet all the criteria under the EPA Audit Policy to receive penalty mitigation beyond that set forth in the UST Penalty Policy. For example:
 - The owner or operator must meet the Audit Policy's prompt disclosure requirement

² For owners or operators that self-disclose their violations after February 12, 1999, EPA will presume that the disclosure is not timely. However, EPA is offering a reduced settlement amount for these violations using UST penalty policy theories, if they come into compliance before June 22, 1999.

which requires a full written disclosure of a violation to EPA within 10 days after discovering that the violation has occurred, or may have occurred.

- The owner or operator, in order to receive a 100% reduction in the gravity component of the penalty amount, must certify³ that the violation was systematically discovered through: (1) an environmental audit; or (2) an objective, documented, systematic procedure or practice reflecting the regulated entity's due diligence. The regulated entity must provide accurate and complete documentation to the Agency as to how it exercises its due diligence activities and may be required to make such information publicly available to receive this penalty reduction. Note: as the deadline for upgrading, replacing or closing tanks has been widely publicized, it may be difficult for an UST owner or operator to show they became aware of their non-compliance obligations through a voluntary audit or due diligence activities after the deadline expired.
- The owner or operator in order to receive a 75% reduction in the gravity component of the penalty amount, the owner or operator must certify that the violation was discovered voluntarily, and not through a legally mandated monitoring or sampling requirement prescribed by statute, regulation, permit, judicial or administrative order, or consent agreement.
- Generally, EPA will not enter into settlements that allow continued operation of a substandard UST system.

General Provisions for All Self-Disclosure Settlements:

- An exception for allowing continued operation of a substandard UST system for high enforcement priority facilities, in general, or low enforcement priority facilities after June 22, 1999 is where the owner or operator of the facility can demonstrate the continued operation is in the public interest, will not pose any significant risk to human health or the environment and will culminate in full compliance with all UST technical standards.
- Examples of some public interest justifications: (1) the facility is the only source of fuel within a 20-mile radius that provides services to a community; (2) the tanks are necessary to fuel emergency generators for a hospital or a school; or (3) the tanks are necessary to continue operation of a public airport.
- In order to allow continued operation of a substandard UST system under a public interest justification, the owner or operator must show: (1) a valid contract for the facility to come

³ EPA may consider preparing standardized certification language for: (1) method of discovery of the violation; (2) compliance with release detection and financial responsibility requirements; and (3) no releases at the facility that went unreported. EPA may also request any necessary documentation to demonstrate the validity of the certification.

into compliance with the Dec. 22, 1998 requirements; (2) current compliance with leak detection requirements; and (3) current compliance with financial assurance requirements.

- This self-disclosure settlement policy does not apply when the violation caused or is causing serious harm or may pose imminent and substantial endangerment to human health or the environment, repeated violations, criminal conduct or violates terms of judicial or administrative order or consent agreement.

This document does not establish or modify any regulatory requirements; it provides guidance on policies and procedures but does not constitute final Agency action on any matter. It also is not intended, and can not be relied upon, to create any right, benefit, or trust responsibility enforceable by any party in litigation with the United States.
